

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DIANA TREJOS, ROSA DAMARIS LOPEZ,
BERKY LOPEZ; LILIANA RUIZ FIERRO,
AMERICA PATRICIA GONZALEZ;
FLORICELDA ALONZO; WIDMAR MEJIA
CHACON; EDWIN YEPES, ARNALDO
PEREIRA; and HUGO RAMIREZ, on behalf
of themselves and others similarly situated,

Plaintiffs,

Docket No.: 08-CV-1477(CBA)

-against-

ANSWER

EDITA'S BAR AND RESTAURANT, INC.,
d/b/a Flamingo; EDITA D'ANGELO, a/k/a
Edith D'Angelo, individually and LUIS ALBERTO
RUIZ, individually,

Defendants.

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Defendants Edita's Bar and Restaurant, Inc., d/b/a Flamingo ("Flamingo"),
Edita D'Angelo a/ka Edith D'Angelo ("D'Angelo") and Luis Alberto Ruiz ("Ruiz" and
together with Flamingo and D'Angelo hereinafter referred to collectively as the
"Defendants") as and for their answer to the Complaint dated April 10, 2008 (the
"Complaint") of Diana Trejos ("Trejos"), Rosa Damaris Lopez ("R. Lopez"); Berky Lopez
("B. Lopez"), Liliana Ruiz Fierro ("Fierro"), America Patricia Gonzalez ("Gonzalez"),
Floricelda Alonzo ("Alonzo"), Widmar Mejia Chacon ("Chacon"), Edwin Yepes ("Yepes"),
Arnoldo Pereira ("Pereira") and Hugo Ramirez ("Ramirez"), on behalf of themselves and
others similarly situated (hereinafter referred to collectively as the "Plaintiffs") respectfully
state as follows:

1. Paragraph “1” of the Complaint sets forth Plaintiffs’ legal conclusions to which no response is required from Defendants.

2. Deny that Plaintiffs are all former employees of Flamingo as alleged in paragraph “2” of the Complaint. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in ¶ “2” of the Complaint.

3. Admit that Flamingo did not pay dancers any wages as alleged in ¶ “3” of the Complaint, affirmatively allege that dancers were independent contractors and not employees and deny that wages should have been paid to dancers. Deny each and every other allegation set forth in ¶ “3” of the Complaint.

4. Admit that video surveillance was used in the public areas of the Flamingo as alleged in ¶ “4” of the Complaint. Admit/signed in and out. Deny each and every other allegation set forth in paragraph “4” of the Complaint.

5. Paragraph “5” of the Complaint sets forth Plaintiffs’ proposed conclusions of law to which no response is required from Defendants.

6. Admit the allegations set forth in ¶ “6” of the Complaint to the extent of the causes of action which seek relief pursuant to the Fair Labor Standards Act.

7. Paragraph “7” of the Complaint does not relate to Defendants and as such, no response is required.

8. Admit the allegations set forth in ¶ “8” of the Complaint.

9. Deny knowledge or information sufficient to form a belief as to the

truth of each and every allegation set forth in ¶ “9” of the Complaint, and therefore deny such allegations.

10. Admit that Trejos was a dancer at Flamingo as alleged in ¶ “10” of the Complaint but denies that she was an employee of Flamingo. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in ¶ “10” of the Complaint, and therefore deny such allegations.

11. Deny knowledge or information to form a belief as to the truth of each and every allegation set forth in ¶ “11” of the Complaint, and therefore deny such allegations.

12. Admit that R. Lopez was a dancer at Flamingo as alleged in ¶ “12” of the Complaint but denies that she was an employee of Flamingo. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in ¶ “12” of the Complaint

13. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in ¶ “13” of the Complaint, and therefore deny such allegations.

14. Admit that B. Lopez was a dancer at Flamingo as alleged in ¶ “14” of the Complaint but denies that she was an employee of Flamingo. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in ¶ “14” of the Complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in ¶ “15” of the Complaint, and therefore deny such allegations.

16. Admit that Fierro was a dancer at Flamingo as alleged in ¶ “16” of the Complaint but denies that she was an employee of Flamingo. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in ¶ “16” of the Complaint, and therefore deny such allegations.

17. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in ¶ “17” of the Complaint, and therefore deny such allegations.

18. Admit that Gonzalez was a dancer at Flamingo as alleged in ¶ “18” of the Complaint but deny that she was an employee of Flamingo. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in ¶ “18” of the Complaint, and therefore deny such allegations.

19. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in ¶ “19” of the Complaint, and therefore deny such allegations.

20. Admit that Alonzo was a dancer at Flamingo as alleged in ¶ “20” of the Complaint but denies that she was an employee of Flamingo. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained

in ¶ “20” of the Complaint, and therefore deny such allegations.

21. Deny each and every allegation set forth in ¶ “21” of the Complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in ¶ “22” of the Complaint, and therefore deny such allegations.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “23” of the Complaint, and therefore deny such allegations.

24. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in ¶ “24” of the Complaint, and therefore deny such allegations.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “25” of the Complaint, and therefore deny such allegations .

26. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in ¶ “26” of the Complaint, and therefore deny such allegations.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “27” of the Complaint, and therefore deny such allegations.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “28” of the Complaint, and therefore deny such allegations.

29. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in ¶ “29” of the Complaint, and therefore deny such allegations

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “30” of the Complaint, and therefore deny such allegations.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “31” of the Complaint, and therefore deny such allegations.

32. Paragraph “32” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants.

33. Admit the allegations set forth in ¶ “33” of the Complaint.

34. Paragraph “34” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “34” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

35. Paragraph “35” of the Complaint sets forth Plaintiffs’ legal argument

and proposed conclusions of law to which no response is required from Defendants.

36. Admit the allegations set forth in ¶ “36” of the Complaint.

37. Admit the allegations set forth in ¶ “37” of the Complaint.

38. Deny each and every allegation set forth in ¶ “38” of the Complaint.

39. Deny each and every allegation set forth in ¶ “39” of the Complaint.

40. Deny each and every allegation set forth in ¶ “40” of the Complaint.

41. Paragraph “41” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “41” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

42. Paragraph “42” of the Complaint sets forth Plaintiffs legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “42” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

43. Paragraph “43” of the Complaint sets forth Plaintiffs legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “43” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

44. Deny each and every allegation set forth in ¶ “44” of the Complaint.

45. Admit the allegations set forth in ¶ “45” of the Complaint.

46. Admit that Flamingo Dancers received funds directly from customers but deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶ “46” of the Complaint, and therefore deny such allegations. Deny that payments were gratuities as alleged in ¶ “46” of the Complaint.

47. Deny each and every allegation set forth in ¶ “47” of the Complaint.

48. Admit that Flamingo Dancers received funds directly from customers but deny that such payments were gratuities as alleged in ¶ “48” of the Complaint.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “49” of the Complaint, and therefore deny such allegations.

50. Admit the allegations set forth in ¶ “50” of the Complaint but deny that any payments received by Flamingo Dancers directly from customers were gratuities.

51. Deny the allegations set forth in ¶ “51” of the Complaint and further deny that Flamingo had any duty to inform Flamingo Dancers about the wage provisions of the Fair Labor Standards Act or New York Labor Law.

52. Admit the allegations set forth in ¶ “52” of the Complaint.

53. Deny each and every allegation set forth in ¶ “53” of the Complaint.

54. Deny each and every allegation set forth in ¶ “54” of the Complaint.

55. Admit that each Flamingo Dancer had a weekly schedule but deny each and every other allegation set forth in paragraph “55” of the Complaint.

56. Admit that the arrival of each Flamingo Dancer was maintained by a sign in system but deny involvement by D'Angelo and Ruiz as alleged in ¶ "56" of the Complaint. Deny each and every other allegation set forth in ¶ "56" of the Complaint.

57. Deny each and every allegation set forth in ¶ "57" of the Complaint.

58. Admit the allegations set forth in ¶ "58" of the Complaint.

59. Admit that Flamingo collected money from dancers for lateness or unexcused absences as alleged in ¶ "59" of the Complaint but deny that failure of a dancer to pay a fine resulted in the dancer being fired.

60. Deny each and every allegation set forth in ¶ "60" of the Complaint.

61. Deny each and every allegation set forth in ¶ "61" of the Complaint.

62. Deny each and every allegation set forth in ¶ "62" of the Complaint.

63. Deny each and every allegation set forth in ¶ "63" of the Complaint.

64. Defendants are incapable of responding to the allegations set forth in ¶ "64" of the Complaint in their present form except admit that Flamingo established certain rules applicable to Flamingo Dancers and other independent contractors in order to prevent prostitution, drug usage and other illegal activities.

65. Deny each and every allegation set forth in ¶ "65" of the Complaint.

66. Admit that Flamingo imposed certain rules and regulations designed to prohibit Flamingo Dancers from engaging in prostitution, drug usage and other illegal conduct. Deny the allegations set forth in ¶ "66" of the Complaint except admit that there

were ramifications imposed for violating those rules implemented by Flamingo which were intended to prevent Flamingo Dancers from engaging in prostitution, drug usage and other illegal conduct.

67. Admit that Flamingo retracted the privilege of allowing Flamingo Dancers to utilize its facilities as independent contractors as set forth in ¶ “67” of the Complaint.

68. Admit that there were various theme nights implemented at the Flamingo as alleged in ¶ “68” of the Complaint but deny the remaining allegations set forth in paragraph ¶ “68” of the Complaint.

69. Admit the allegations set forth in ¶ “69” of the Complaint to the extent that Flamingo did not provide Flamingo Dancers with uniforms or money to purchase uniforms but deny that Flamingo had any duty to do so. Admit the remaining allegations in ¶ “69” of the Complaint.

70. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “70” of the Complaint.

71. Paragraph “71” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “71” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

72. Deny each and every allegation set forth in ¶ “72” of the Complaint.

73. Admit the allegations set forth in ¶ “73” of the Complaint except deny Flamingo Waiters carried crates of beer.

74. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “74” of the Complaint, and therefore deny such allegations.

75. Paragraph “75” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. Deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in ¶ “75” of the Complaint, and therefore deny such allegations.

76. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “76” of the Complaint, and therefore deny such allegations.

77. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “77” of the Complaint, and therefore deny such allegations.

78. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “78” of the Complaint, and therefore deny such allegations.

79. Deny each and every allegation set forth in ¶ “79” of the Complaint.

80. Deny each and every allegation set forth in ¶ “80” of the Complaint.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “81” of the Complaint, and therefore deny such allegations.

82. Paragraph “82” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “82” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “83” of the Complaint, and therefore deny such allegations.

84. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “84” of the Complaint, and therefore deny such allegations.

85. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “85” of the Complaint, and therefore deny such allegations.

86. Deny each and every allegation set forth in ¶ “86” of the Complaint.

87. Deny each and every allegation set forth in ¶ “87” of the Complaint.

88. Deny each and every allegation set forth in ¶ “88” of the Complaint.

89. Deny each and every allegation set forth in ¶ “89” of the Complaint.

90. Deny each and every allegation set forth in ¶ “90” of the Complaint.

91. Deny each and every allegation set forth in ¶ “91” of the Complaint.

92. Deny each and every allegation set forth in ¶ “92” of the Complaint.

93. Deny each and every allegation set forth in ¶ “93” of the Complaint.

94. Deny each and every allegation set forth in ¶ “94” of the Complaint.

95. Deny each and every allegation set forth in ¶ “95” of the Complaint.

96. Deny each and every allegation set forth in ¶ “96” of the Complaint.

97. Paragraph “97” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “97” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

98. Deny each and every allegation set forth in ¶ “98” of the Complaint.

99. Paragraph “99” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants.

100. Defendants repeat, reiterate and reallege each and every allegation set forth in ¶¶’s “1” through “99” as if fully set forth herein.

101. Paragraph “101” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “101” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

102. Paragraph “102” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “102” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

103. Paragraph “103” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “103” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

104. Defendants repeat, reiterate and reallege each and every allegation set forth in ¶¶’s “1” through “103” as if fully set forth herein.

105. Paragraph “105” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “105” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

106. Paragraph “106” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “106” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

107. Defendants repeat, reiterate and reallege each and every allegation set forth in ¶¶’s “1” through “106” as if fully set forth herein.

108. Paragraph “108” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “108” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

109. Paragraph “109” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “109” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

110. Defendants repeat, reiterate and reallege each and every allegation set forth in ¶¶’s “1” through “109” as if fully set forth herein.

111. Paragraph “111” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “111” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

112. Paragraph “112” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “112” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

113. Paragraph “113” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the

extent ¶ “113” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

114. Defendants repeat, reiterate and reallege each and every allegation set forth in ¶¶’s “1” through “113” as if fully set forth herein.

115. Paragraph “115” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “115” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

116. Paragraph “116” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “116” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

117. Defendants repeat, reiterate and reallege each and every allegation set forth in ¶¶’s “1” through “116” as if fully set forth herein.

118. Paragraph “118” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “118” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

119. Paragraph “119” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the

extent ¶ “119” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

120. Paragraph “120” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “120” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

121. Defendants repeat, reiterate and reallege each and every allegation set forth in ¶¶’s “1” through “120” as if fully set forth herein.

122. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ “122” of the Complaint.

123. Paragraph “123” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “123” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

124. Paragraph “124” of the Complaint sets forth Plaintiffs’ legal argument and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “124” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

125. Deny each and every allegation set forth in ¶ “125” of the Complaint.

126. Paragraph “126” of the Complaint sets forth Plaintiffs legal argument

and proposed conclusions of law to which no response is required from Defendants. To the extent ¶ “126” of the Complaint purports to contain factual allegations, Defendants deny each and every allegation directed at them.

As and For a First Affirmative Defense

127. The Complaint fails to state a claim against Defendants upon which relief can be granted.

As and For a Second Affirmative Defense

128. Plaintiffs, by their own conduct, are estopped from bringing this action against Defendants.

As and For a Third Affirmative Defense

129. Plaintiffs’ damages, if any, were caused by their own acts and conduct or by the acts and conduct of those for whom they are responsible.

As and For a Fourth Affirmative Defense

130. Plaintiffs’ damages, if any, were caused by the acts and conduct of persons or entities whose conduct Defendants are not responsible for.

As and For a Fifth Affirmative Defense

131. Plaintiffs’ claims are barred by the doctrine of laches.

As and For a Sixth Affirmative Defense

132. Plaintiffs lack capacity and/or standing to bring the causes of action in Complaint in that they are independent contractors.

As and For a Seventh Affirmative Defense

133. This Court lacks personal jurisdiction over Defendants.

As and For an Eighth Affirmative Defense

134. Except for claims alleged to arise under the Fair Labor Standards Act, this Court lacks subject matter jurisdiction over allegations in the Complaint.

As and For a Ninth Affirmative Defense

135. The causes of action in the Complaint are barred in whole, or in part, by the applicable statute of limitations.

As and For a Tenth Affirmative Defense

136. To the extent Plaintiffs are deemed to be employees of Flamingo, upon information and belief, they were paid all wages to which they were entitled.

As and For an Eleventh Affirmative Defense

137. To the extent Plaintiffs are deemed to be employees of Flamingo who did not receive minimum wages as required under the Fair Labor Standards Act or New York Labor Law, Defendants failure to pay such wages was not willful.

WHEREFORE, Defendants respectfully request that the Complaint be dismissed in its entirety and that the Defendants be awarded such other and further relief as the Court may deem just, proper and equitable.

Dated: Mineola, New York
April 30, 2008

Forchelli, Curto, Schwartz,
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Dated: Rockville Centre, New York
April 30, 2008

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